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ATTORNEYS

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May 10, 2016

BY HAND

Maura S. Doyle, Clerk
Supreme Judicial Court for The County of Suffolk
John Adams Courthouse, 1st Floor
One Pemberton Square, Suite 1300
Boston, MA 02108-1707

**RE: Northeast Energy Solutions, Inc. v. Massachusetts Department of Public Utilities,
Docket Nos. 2015-SJ-398 and 2015-SJ-399**

Dear Clerk Doyle:

Enclosed for filing and docketing please find the Submission of Northeast Energy Solutions, Inc. in Response to Interim Order Dated April 29, 2016.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


Joshua A. Lewin

JAL/jmm
Enclosure
cc: Francis R. Powell, Esq.
Thomas H. Hayman, Esq.

{Client Files/308841/0004/COR/B0598489.DOCX;1}

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Boston Framingham Worcester



COMMONWEALTH OF MASSACHUSETTS

_____)	SUPREME JUDICIAL COURT
NORTHEAST ENERGY SOLUTIONS, INC.)	FOR SUFFOLK COUNTY
Petitioner - Appellant,)	NOS.:
)	
vs.)	SJ-2015-398
)	SJ-2015-399
MASSACHUSETTS DEPARTMENT)	
OF PUBLIC UTILITIES)	
Respondent – Appellee)	
_____)	

SUBMISSION OF NORTHEAST ENERGY SOLUTIONS, INC.
IN RESPONSE TO INTERIM ORDER DATED APRIL 29, 2016

Dear Justice Lenk:

This firm represents Northeast Energy Solutions, Inc. (“NEES”), the Plaintiff/Appellant in Dockets 2015-SJ-398 and 2015-SJ-399, which cases involve appeals pursuant to G. L. c. 25, § 5, of orders issued by the Department of Public Utilities (“DPU”) in DPU dockets 15-39 and 15-48. NEES hereby submits this letter in response to the Court’s Interim Order dated April 29, 2016, seeking the parties’ positions on whether recent announcements by Kinder Morgan render moot the issues raised in these appeals.

As set forth below, NEES respectfully suggests that the facts and circumstances surrounding Kinder Morgan’s decision to “suspend” further work and expenditures on the Northeast Energy Direct Project are not sufficiently clear at this time to enable NEES to articulate its position regarding whether the issues on appeal are moot. NEES requests that the Court stay these appeals, remand the matters to the DPU to determine whether its final orders in

Dockets 15-39 and 15-48 should be vacated, and then permit the parties the opportunity to address to this Court whether the issues on appeal have been rendered moot.

Background

In DPU Dockets 15-39 and 15-48, the DPU was presented with petitions by the Berkshire Gas Company and the Bay State Gas Company, d/b/a Columbia Gas of Massachusetts seeking the DPU's approval pursuant to G. L. c. 164, §94A of so-called Precedent Agreements that each company executed with Tennessee Gas Pipeline Company, LLC ("Tennessee").

At the time of the proceedings before the DPU, Tennessee was seeking to expand its pipeline capacity from Wright, New York, to Dracut, Massachusetts in a project known as the Northeast Energy Direct project ("NED Project"). The Precedent Agreements set forth the rights and obligations of the parties during the NED project pre-approval process before the Federal Energy Regulatory Commission ("FERC"). Upon satisfaction of various conditions precedent and receipt of FERC approval of the NED project, the Precedent Agreements obligated the Berkshire Gas Company and the Bay State Gas Company to execute long-term firm transportation service agreements with Tennessee for the purchase of natural gas capacity from Tennessee's new pipeline.

NEES is comprised of stakeholders, including conservation land owners, who are committed to investigating and providing sound and thorough energy infrastructure analysis and advocacy regarding the economics and routing of energy transportation projects in the Northeastern United States. Through its founding members, NEES represents over 101,850 individuals in The Commonwealth and its founding members collectively own or hold

conservation restrictions on over 50,000 acres of land in the Commonwealth. NEES's members are impacted in various ways by the NED Project.

NEES petitioned the DPU to intervene in the proceedings pursuant to 22 C.M.R. § 1.04. NEES's petitions were denied by orders of a hearing officer and those orders were affirmed by interim orders of the DPU (the "Interim Orders"). The matters proceeded before the DPU with NEES allowed only limited participation. By final orders dated August 31, 2015, the DPU allowed the petitions by the Bay State Gas Company and the Berkshire Gas Company and approved the Precedent Agreements (the "Final Orders"). On September 21, 2015, NEES appealed the Final Orders and the Interim Orders.¹

On or about April 20, 2016, during the pendency of these appeals, Tennessee's parent company, Kinder Morgan, issued a statement via its website that it had "suspended further work and expenditures on the Northeast Energy Direct (NED) project." The statement indicated that "there are currently neither sufficient volumes, nor a reasonable expectation of securing them, to proceed with the project as it is currently configured."

While Kinder Morgan's statement suggests that it may ultimately "withdraw" the NED Project as indicated in the Court's Interim Order, cancelation of the project has not been confirmed in any public statement or filing by Kinder Morgan, FERC, the DPU, or the counterparties to the Precedent Agreements. Kinder Morgan's statement merely indicated that current spending on the project would be "suspended." Neither Kinder Morgan, the DPU, the Berkshire Gas Company, nor the Columbia Gas Company has officially confirmed that the

¹ The DPU did not notify counsel for NEES that it had certified the record and provided it to the Court. Nor did the DPU provide copies of the administrative record to counsel for NEES. NEES was waiting for the DPU to certify and file copies of the record so that this appeal could proceed on the merits. NEES just recently learned in conversations with counsel for the DPU that the DPU has in fact certified and filed the administrative record with the Court.

Precedent Agreements have been canceled, terminated, rescinded or otherwise disapproved by the DPU. In recent filings with the DPU in Docket 15-178, the Berkshire Gas Company indicated that Tennessee has begun the process of terminating the Precedent Agreements, but that the parties are engaged in good faith negotiations to explore “a possible amendment of their arrangement in order to determine whether some other agreement may achieve their mutual objectives.” The Berkshire Gas Company indicated that the “30-day negotiation period required under the Precedent Agreement shall expire on May 20, 2016 and, to the extent that [the parties] cannot agree to an alternative arrangement within that period, the Precedent Agreement shall terminate without further action required by either party.” See DPU 15-178, MOTION OF THE BERKSHIRE GAS COMPANY TO SUSPEND THE PROCEDURAL SCHEDULE (April 25, 2016); HEARING OFFICER RULING ON REQUEST TO STAY (April 26, 2016) (Attached hereto as Exhibits A & B, respectively). Similarly, in a filing with FERC relating to the NED Project, Tennessee indicated that it “is in the process of determining how best to proceed consistent with existing contracts, and will provide an update on the status of the supplemental filing when it submits its status report no later than May 26, 2016.” Letter of Tennessee Gas Pipeline Company, L.L.C. dated April 26, 2016, attached hereto as Exhibit C.

At this point in time, the DPU’s orders allowing the Petitions of the Bay State Gas Company and the Berkshire Gas Company and approving the Precedent Agreements remain in full force and effect; no issues have been rendered moot.

Argument

1. The Court Should Stay the Appeals, Remand to the DPU to Reconsider its Final Decisions, Require The DPU to Issue a New Order, and Provide a Further Opportunities for the Parties to Address the Issue of Mootness.
 - a. NEES's Appeal Has Not Been Rendered Moot By Kinder Morgan's Announcement.

Kinder Morgan's announcement suspending further work and expenditures on the NED Project does not render moot NEES's appeal. Until and unless DPU reverses its decision approving the Precedent Agreements, the Precedent Agreements remain in force and Tennessee, the Bay State Gas Company and the Berkshire Gas Company may proceed with their respective efforts to complete the NED Project and consummate the firm natural gas transportation agreements contemplated by the Precedent Agreements. It is also possible that the parties may reach an alternative or amended agreement as a result of their ongoing negotiations which might allow them to proceed with some variation of the NED Project. In any case, DPU's final decisions in 15-39 and 15-48 remain binding and Tennessee, the Bay State Gas Company and the Berkshire Gas Company may proceed with the NED Project pursuant to the authority granted by DPU. As such, none of the issues in these appeals have been rendered moot and the issues will not be rendered moot unless the DPU reverses or vacates its Final Orders.

- b. The Court Should Stay the Proceedings, Remand to the DPU, and Require DPU to Reconsider the Final Orders in 15-39 and 15-48.

NEES respectfully requests that the Court stay these appeals and remand the proceedings for DPU to conduct an inquiry on the current status of the NED Project and to reconsider whether the Interim and Final Orders in 15-39 and 15-48 should be vacated in light of recent events. NEES acknowledges that some or all of the issues may be rendered moot if DPU vacates, rescinds or otherwise reverses its orders in DPU 15-39 or 15-48. In light of Tennessee's

recent announcements, DPU should make a determination as to whether the Final Orders should be vacated or modified, so that NEES, other appellants and this Court may assess the justiciability of the issues raised in these appeals. Until or unless there is more clarity on the status of the Precedent Agreements and DPU's Final Orders approving the Precedent Agreements, it is impossible for NEES to make an informed argument to the Court regarding the mootness or justiciability of the issues raised in NEES's appeals, other than to say that none of the issues in these appeals has yet been rendered moot.

Accordingly, NEES requests that the Court remand DPU 15-39 and 15-48 and require the DPU to conduct further proceedings to assess the status of the Precedent Agreements, to consider whether to vacate and reverse the Final Orders, and to issue a further order affirming or vacating the Final Orders.

c. The Court Should Provide the Parties An Opportunity to Address Mootness After the DPU Has Issued a Decision on Whether to Vacate the Final Orders

NEES respectfully requests that the Court extend the time for NEES to address whether the issues raised in these appeals have become moot until the DPU clarifies the status of its Final Orders approving the Precedent Agreements. NEES respectfully suggests that it is premature at this time to address the issue of mootness. The issue would be more appropriately addressed once the status of the NED Project and DPU's approval of the Precedent Agreements has been assessed by the DPU with input from the relevant parties and the DPU has made a determination on whether to vacate the Final Orders.

WHEREFORE, Northeast Energy Solution, Inc. respectfully requests that the Court stay these appeals, remand the cases to the Department of Public Utilities, order the Department to reconsider its final orders in DPU 15-39 and DPU 15-48, issue new final orders affirming or vacating its previous orders, and then permit the parties the opportunity to address with this Court whether the appeals have been rendered moot.

Respectfully Submitted

NORTHEAST ENERGY SOLUTIONS, INC.

By Its Counsel:



Vincent DeVito, Esq.

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jlewin@bowditch.com

Christopher Marquis, Esq.

cmarquis@bowditch.com

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1 International Place, 44th Floor

Boston, Massachusetts 02110

(617) 757-6500

May 10, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by first-class mail, facsimile, and electronic mail on

5/10/16



Joshua A. Lewin

EXHIBIT A

James M. Avery

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Suite 2250
Boston, MA 02110

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Admitted in: MA

April 25, 2016

HAND DELIVER and ELECTRONIC

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, Massachusetts 02110

Re: The Berkshire Gas Company - D.P.U. 15-178

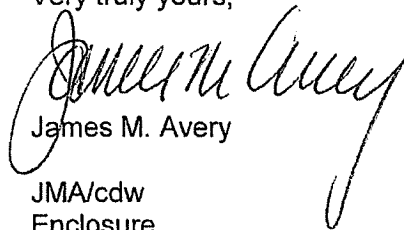
Dear Secretary Marini:

Enclosed please find the Motion of The Berkshire Gas Company to Suspend the Procedural Schedule for filing in the above-referenced proceeding.

Please call me if you require further assistance with respect to this matter.

Thank you for your consideration.

Very truly yours,



James M. Avery

JMA/cdw
Enclosure

cc: Laurie Ellen Weisman, Hearing Officer (w/enc via hand delivery and electronic)
Service List - D.P.U. 15-178 (paper and electronic)
Karen L. Zink, President and COO (electronic)
Jennifer M. Boucher, Manager – Regulatory Economics (electronic)
Robert Gyurjan, Lead Analyst – Regulatory (electronic)

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES**

THE BERKSHIRE GAS COMPANY)
_____))

D.P.U. 15-178

**MOTION OF THE BERKSHIRE GAS COMPANY
TO SUSPEND THE PROCEDURAL SCHEDULE**

Pursuant to 220 C.M.R. 1.04(5), The Berkshire Gas Company ("Berkshire" or the "Company") respectfully requests that the Department of Public Utilities (the "Department") suspend the procedural schedule in this proceeding. In support of this Motion to Suspend the Procedural Schedule ("Motion"), Berkshire states the following:

1. On December 16, 2015, the Company filed a petition with the Department seeking approval, pursuant to G.L. c. 164, § 94A, of a form of Precedent Agreement with Tennessee Gas Pipeline Company, L.L.C. ("Tennessee") relating to the supply path portion of the so-called Northeast Energy Direct ("NED") Project.
2. The Department has established a procedural schedule for such review, including discovery (now completed) and an evidentiary hearing scheduled for May 4, 2016.
3. On April 21, 2016, the Company received notice from Tennessee executing its right to terminate the Precedent Agreement pursuant to Section 12(e) of the Precedent Agreement. Section 12(e) requires Tennessee and the Company to commence "good faith negotiations," not to exceed 30 days, towards a possible amendment of their arrangement in order to determine whether some other agreement may achieve their mutual objectives.
4. The 30-day negotiation period required under the Precedent Agreement shall expire on May 20, 2016 and, to the extent that Tennessee and Berkshire cannot agree to an alternative arrangement within that period, the Precedent Agreement shall terminate without further action required by either party.

5. Berkshire respectfully requests a suspension of the procedural schedule in this docket as it completes its legal obligations under the executed Precedent Agreement (and pursues any opportunity that may facilitate the achievement of the Company's obligations). A likely outcome will be a subsequent petition by the Company to withdraw its filing after the May 20, 2016 deadline, but it must first pursue its obligations pursuant to the Precedent Agreement.
6. On April 21, 2016, the Town of Montague submitted a motion to dismiss this proceeding or, in the alternative, to suspend the proceeding. The Company notes that a suspension of the procedural schedule will enable the Company to satisfy its contractual obligations while preserving any potential opportunity to identify and pursue a commercial opportunity that would benefit customers. A dismissal of this proceeding, on the other hand, is prejudicial to the Company and its customers and premature. There is no prejudice to any other party by reason of the grant of a short suspension, while there could be significant risk to the Company and customers. The Company will provide an update and make an appropriate procedural proposal after the close of the obligatory negotiation period.

Accordingly, for all the reasons stated herein, The Berkshire Gas Company respectfully requests that the Department suspend the procedural schedule in this proceeding and take such other action as may be necessary and appropriate consistent with this request.

Respectfully submitted,

THE BERKSHIRE GAS COMPANY

By: 
James M. Avery, Esq.
Pierce Atwood, LLP
100 Summer Street, Suite 2250
Boston, MA 02110
Tel.: 617.488.8100
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javery@pierceatwood.com

Dated: April 25, 2016

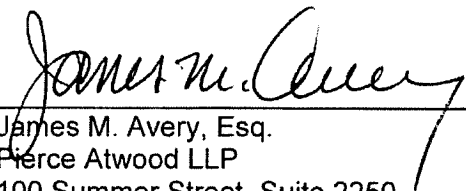
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 15-178

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1) (Department's Rules of Practice and Procedure).

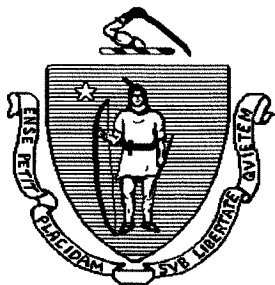
Dated at Boston, Massachusetts this 25th day of April, 2016.


James M. Avery, Esq.
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Boston, MA 02110
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Of Counsel for:

THE BERKSHIRE GAS COMPANY

EXHIBIT B



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 15-178

April 26, 2016

Petition of The Berkshire Gas Company for Approval of a Precedent Agreement with Tennessee Gas Pipeline Company, LLC, pursuant to G.L. c. 164, § 94A.

HEARING OFFICER RULING ON REQUEST TO STAY

On December 16, 2015, The Berkshire Gas Company (“Berkshire” or “Company”) filed a petition with the Department of Public Utilities (“Department”) seeking approval of a precedent agreement related to the supply path portion of Tennessee Gas Pipeline Company, LLC’s (“TGP”) Northeast Energy Direct (“NED”) project.

On April 20, 2016, TGP and its parent company, Kinder Morgan, Inc., announced that it had suspended further work and expenditures on the NED project. Section 12(e) of the precedent agreement provides that TGP has the right to terminate the precedent agreement for certain reasons, but that the parties must then commence good faith negotiations, not to exceed 30 days, towards a possible amendment of their arrangement in order to determine whether some other agreement may achieve their mutual objectives. After those 30 days, the agreement shall terminate.

On April 22, 2016, the Town of Montague (“Town”), an intervenor in this matter, filed a motion to dismiss these proceedings or, in the alternative, suspend the schedule to allow the Company to communicate with TGP and withdraw its petition. On April 26, 2016, the Company filed a motion to suspend the procedural schedule. In support of its motion, the Company states that, to the extent that TGP and Berkshire cannot agree to an alternative arrangement within 30 days, the precedent agreement shall terminate on May 20, 2016, without further action required of either party. Thus, Berkshire requests a suspension of the procedural schedule while it completes its legal obligations under the precedent agreement. The Company states that a likely outcome will be a petition to withdraw the filing after the May 20, 2016 deadline. The Company argues that a dismissal of this proceeding is prejudicial to the Company and its customers, and premature, but a suspension will enable the Company to satisfy its contractual obligations while preserving any potential opportunity to identify and pursue a commercial opportunity to benefit customers.

I find that the procedural schedule should be suspended until May 21, 2016;¹ I further find that there is no need to dismiss the proceeding pending the 30-day negotiation period required by the precedent agreement.

/s/

Laurie Ellen Weisman
Hearing Officer

¹ The next scheduled event for this proceeding was an evidentiary hearing on May 4, 2016.

EXHIBIT C



Tennessee Gas Pipeline
Company, L.L.C.
a Kinder Morgan company

April 26, 2016

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Tennessee Gas Pipeline Company, L.L.C., Docket No. CP16-21-000
Northeast Energy Direct Project

Dear Ms. Bose:

On November 20, 2015, Tennessee Gas Pipeline Company, L.L.C. ("Tennessee") filed with the Federal Energy Regulatory Commission ("Commission") a certificate application ("Application") in the above-referenced docket for the Northeast Energy Direct Project ("Project"). The Application remains pending before the Commission. On April 22, 2016, Tennessee submitted a letter to the Commission requesting that the Commission not take any further action in processing the Application, pending Tennessee submitting a status report to the Commission no later than May 26, 2016. The April 22, 2016 letter was filed following Kinder Morgan, Inc., Tennessee's parent company, announcing on April 20, 2016 that the company would suspend further work and expenditures on the Project, as a result of inadequate capacity commitments from prospective customers and a determination that the Project is uneconomic.

Tennessee had previously committed to submitting a supplemental filing by the end of April 2016 in order to provide modifications to the Project scope, as well as to provide updated information in response to scoping comments and to Commission staff data requests. At this time, in light of the April 20, 2016 announcement by Kinder Morgan, Inc. and Tennessee's April 22, 2016 letter filed with the Commission, Tennessee will not be submitting the supplemental filing by the end of April 2016. As noted in the April 22, 2016 letter, Tennessee is in the process of determining how best to proceed consistent with existing contracts, and will provide an update on the status of the supplemental filing when it submits its status report no later than May 26, 2016.

In accordance with the Commission's filing requirements, Tennessee is submitting this filing with the Commission's Secretary through the eFiling system, and is providing a copy of this filing copy of this filing to the Office of Energy Projects and to all parties on the official service list for this proceeding.

Respectfully submitted,

TENNESSEE GAS PIPELINE COMPANY, L.L.C.

By: /s/ J. Curtis Moffatt
J. Curtis Moffatt
Deputy General Counsel and Vice President Gas
Group Legal

cc: Mr. Terry Turpin (Commission Staff)
Mr. Rich McGuire (Commission Staff)
Mr. Eric Tomasi (Commission Staff)
All parties on service list